

# **The Challenges of Europe-Africa Relations: An Agenda of Priorities**

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## **MAIN CHALLENGES OF EUROPE-AFRICA RELATIONS IN THE FIELD OF HUMAN RIGHTS**

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First of all, let me start by thanking the organisers of this International Conference for the organization itself and for the warm invitation to take part in it and to share my comments and views about a very relevant topic of the agenda of international relations at the dawn of twenty-first century.

In my view, there are five major challenges of Europe-Africa relations in the field of human rights and good governance:

- 1) The need of an adequate support from the European Union (EU, hereinafter) to the evolving process of institutionalization of the African System for the protection of human rights.
- 2) The development of an intercultural dialogue on the issue of human rights, with the aim of advancing towards a multicultural concept of human rights.
- 3) The need of a much more coherent and consistent policy of conditionality from the side of the EU.

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- 4) The Migration policy of the EU should be developed according to the well-established international standards in terms of basic human rights, and
- 5) A deep analysis of the impact of Transnational Corporations in the overall situation of human rights in Africa and the role the EU can play in the process of establishing certain standards for the control and supervision of the activities of private companies carrying out their activities in the African continent.

### **1-. Institutionalization of the African system for the protection of human rights**

Africa did not have its own system for the protection of human rights until the adoption of the African Charter on Human and Peoples' Rights<sup>1</sup> (adopted in 1981, it entered into force in 1986) in the framework of the Organization for African Unity (OAU). Nevertheless, the African system, under the new African Union (AU) since 2002<sup>2</sup>, is the weakest one of the three existing regional systems as far as human rights are concerned (the system of the Council of Europe<sup>3</sup>, the system of the Organization of American States<sup>4</sup> and the system of the African Union). I think that the model of the Council of Europe could be followed by African countries, and Europe would have to support this process. On the other hand, African countries should commit themselves with the strengthening of the system, especially by ratifying the Optional Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights<sup>5</sup>. This

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<sup>1</sup> HEYNS, C.: "The African Charter on Human and Peoples' Rights", in GOMEZ ISA, F. (Director) and PUREZA, J.M.: *La protección internacional de los derechos humanos en los albores del siglo XXI*, Universidad de Deusto, Bilbao, 2003, pp. 593-620. See also EVANS, M. and MURRAY, R. (Eds.): *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*, Cambridge University Press, Cambridge, 2002.

<sup>2</sup> BAIMU, E.: "The African Union: Hope for Better Protection of human rights in Africa?", *African Human Rights Law Journal*, Vol. 1, 2001.

<sup>3</sup> For a general overview of the system of the Council of Europe see CARRILLO SALCEDO, J.A.: *El Convenio Europeo de Derechos Humanos*, Tecnos, Madrid, 2003.

<sup>4</sup> On this, see CANÇADO TRINDADE, A.A.: "El sistema interamericano de protección de los derechos humanos (1948-2002)", in GOMEZ ISA, F. (Director) and PUREZA, J.M.: *La protección...*, *op. cit.*, pp. 547-592.

<sup>5</sup> NALDI, G.J. and MAGLIVERAS: "Reinforcing the African system of human rights: the Protocol on the Establishment of a Regional Court of Human and Peoples' Rights", *Netherlands Quarterly of Human Rights*,

Optional Protocol was adopted in June 1998, but it has not entered into force yet due to the small number of ratifications. In this sense, the lack of political will in most of the African countries is the main obstacle for its entry into force, since they are very reluctant to the very possibility of being supervised and monitored by a body of a jurisdictional nature such as the African Court. They prefer a situation in which States keep control over the process of accountability in cases of violations of human rights.

## **2-. Towards a multicultural concept of human rights**

The second challenge in Europe-Africa relations in terms of human rights is the need of opening a dialogue for the establishment of a truly universal concept of human rights<sup>6</sup>. This dialogue should not be restricted to representatives of States; on the contrary, other actors like NGOs<sup>7</sup>, academics, social movements... should take part in this dialogue, since human rights are an issue of concern not only for States but for every single actor in society.

We have to acknowledge that there are substantial differences in the way Europe and Africa understand human rights. There exist divergent approaches, expressed in the differences between the European Convention on Human Rights (1950) and the African Charter on Human and Peoples' Rights (1981). I would suggest at least five topics in which dialogue is absolutely essential:

- 1) The relation between individual rights and collective rights, since the African cosmovision emphasizes much more the collective dimension of human rights<sup>8</sup>.

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Vol. 16, 1998; UDOMBANA, N.J.: "Towards the African Court on Human and Peoples' Rights: Better late than never", *Yale Human Rights and Development Law Journal*, Vol. 3, 2000.

<sup>6</sup> In this sense, compare SANTOS, B.: "Hacia una concepción multicultural de los derechos humanos", in GOMEZ ISA, F. (Director) and PUREZA, J.M.: *La protección...*, *op. cit.*, pp. 95-122.

<sup>7</sup> WELCH, C.E.: *Protecting Human Rights in Africa. Strategies and Roles for Non-Governmental Organizations*, University of Pennsylvania Press, Philadelphia, 1995.

<sup>8</sup> For a general discussion on the dialectic tension between individual and collective rights see GOMEZ ISA, F.: "El derecho de autodeterminación en el Derecho Internacional contemporáneo", en *Derecho de Autodeterminación y Realidad Vasca*, Servicio Central de Publicaciones del Gobierno Vasco, Vitoria-Gasteiz, 2002, pp. 267-324. Compare also OJO, O.: "Understanding Human Rights in Africa", en BERTING, J. (Ed.): *Human Rights in a Pluralist World. Individuals and Collectivities*, Meckler, London, 1990, pp. 115-123; VANDER WAL, K.: "Collective Rights: A Western View", en BERTING, J. (Ed.): *Human Rights in a Pluralist World. Individuals and Collectivities*, Meckler, London, 1990, pp. 83-98.

- 2) The relation between rights and duties<sup>9</sup>. In this sense, whereas the European Convention on Human Rights does not even mention duties, the African Charter has a whole chapter devoted to duties as a necessary complement of rights<sup>10</sup>.
- 3) The challenge of some african traditional practices to basic human rights like the right to physical integrity<sup>11</sup>.
- 4) The issue of compatibility of Islam with human rights and democracy<sup>12</sup>, and
- 5) The role of economic, social and cultural rights and the right to development<sup>13</sup> as an integral part of universal human rights. We should not forget that the African Charter is the only regional legal instrument that has incorporated both economic, social and cultural rights and solidarity rights. In this sense, the African Charter has recognised solidarity rights such as the right to development<sup>14</sup>, the right to peace<sup>15</sup> or the right to a healthy environment<sup>16</sup>.

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<sup>9</sup> MADIOT, Y.: *Considérations sur les droits et les devoirs de l'Homme*, Bruylant, Bruxelles, 1998; MEYER-BISCH, P. (Dir.): *Les devoirs de l'Homme. De la reciprocité dans les droits de l'homme*, Editions Universitaires, Fribourg Suisse- Editions du CERF, Paris, 1989.

<sup>10</sup> Chapter II of Part I of the African Charter is exclusively devoted to the recognition of duties. It consists of three articles (art. 27, 28 and 29) establishing that “every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community” (art. 27.1). A list of several duties is enshrined in article 29, including “... the duty to preserve the harmonious development of the family...; to serve his national community by placing his physical and intellectual abilities at its service;... to preserve and strengthen social and national solidarity...; to work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;... to preserve and strengthen positive African values...; to contribute to the best of his abilities... to the promotion and achievement of African unity”. An interesting commentary in this respect by MBAYA, E.R.: "Symétrie entre droits et devoirs dans la Charte Africaine des Droits de l'Homme", en MEYER-BISCH, P. (Dir.): *Les devoirs de l'Homme...*, *op. cit.*, p. 49.

<sup>11</sup> RAHMAN, A. and TOUBIA, N.: *Female Genital Mutilation. A Guide to Laws and Policies Worldwide*, Zed Books, New York, 2000.

<sup>12</sup> See the chapter devoted to the relations between Islam and Human Rights in KABUNDA BADI, M.: *Derechos Humanos en Africa. Teorías y Prácticas*, Universidad de Deusto, Bilbao, 2000.

<sup>13</sup> We must take into account that the right to development has african roots, since it is a jurist from Senegal the first one in mentioning it at an International Conference in Strasbourg in 1972, M'BAYE, K.: "Le droit au développement comme un droit de l'homme", *Revue des Droits de l'Homme*, 1972, pp. 503-534. A full analysis of the right to development can be found in GOMEZ ISA, F.: *El derecho al desarrollo como derecho humano en el ámbito jurídico internacional*, Universidad de Deusto, Bilbao, 1999.

<sup>14</sup> Article 22 of the African Charter reads as follows: “All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind...”.

<sup>15</sup> Article 23 states that “all peoples shall have the right to national and international peace and security...”.

<sup>16</sup> Article 24 proclaims that “all peoples shall have the right to a general satisfactory environment favorable to their development”.

In all these issues, a permanent and an open dialogue is more than necessary. Some lessons could be learnt from the experience of the Euro-Mediterranean Dialogue, with the participation of some African countries, initiated in Barcelona in november 1995 under the auspices of the Spanish Presidency of the European Union<sup>17</sup>.

### **3. The need for revision of the policy of conditionality of the EU**

The third challenge is the establishment of a more coherent and consistent policy of conditionality from the EU in its relations with the African continent.

As we all know, conditionality is one of the most important principles the EU applies in its relations with third countries in the fields of development aid<sup>18</sup>, trade and other forms of cooperation<sup>19</sup>. So far, the application of conditionality has been presided by *unilateralism* and *double standards*<sup>20</sup>.

In order for it to be more coherent and more consistent, conditionality should be based on the following principles:

- 1) Indivisibility and interdependence of all human rights. In most of the cases, conditionality is only based on the monitoring of civil and political rights, without fully taking into consideration economic, social and cultural rights. In this respect, special attention should be paid to the situation of economic, social and cultural rights in the given country and to the effects of the application of conditionality,

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<sup>17</sup> *Las relaciones entre la Unión Europea y los países de la cuenca del Mediterráneo*, Coordinadora de ONGs para el Desarrollo, Madrid, 1996.

<sup>18</sup> SIMMA, B.; ASCHENBRENNER, J.B. and SCHULTE, C.: "Human Rights Considerations in the Development Co-operation Activities of the EC", in ALSTON, P. (Ed.): *The EU and Human Rights*, Oxford University Press, Oxford, 1999, pp. 571-626

<sup>19</sup> BRANDTNER, B. and ROSAS, A.: "Trade Preferences and Human Rights", in ALSTON, P. (Ed.): *The EU...*, *op. cit.*, pp. 699-722.

<sup>20</sup> A very accurate criticism can be found in GIONGO, A.: *Human Rights and Democracy in European Development Cooperation: The Case of Cuba*, European Master's Degree in Human Rights and Democratisation, University of Padova-University of Deusto 2002-2003.

particularly when it adopts the form of economic sanctions, in the living conditions of the population, especially the effects on vulnerable groups<sup>21</sup>.

- 2) Dialogue with the different countries with which the EU holds relations should be a key element for the application of the policy of conditionality.
- 3) Emphasis should be made in a *proactive approach* to conditionality rather than exclusively *reactive policies* designed to respond to human rights violations, including sanctions as a last resort. Human rights have to be present in all policies implemented by the EU, including trade or migration policies. The mainstreaming of human rights in EU policies and norms is one of the main challenges if the EU wants to keep coherence and consistency in its adherence to the principle of conditionality in its relations with third countries.
- 4) Finally, the EU should establish a very clear, impartial and transparent procedure for the application of human rights clauses to third countries. If this is not the case, and we are witnessing now an absence of a procedure of this nature, we face the risk of contaminating the application of conditionality with politics and specific interests of different Member-States of the EU.

#### **4. Migration Policy of the EU**

The fourth challenge for the human rights dimension of Europe-Africa relations is how to integrate human rights and development concerns into the migration policies both of the EU itself and of Member-States.

The attitude towards asylum-seekers and migrants is a key component of a human rights policy<sup>22</sup>. According to some independent reports<sup>23</sup>, one of the most worrying areas of

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<sup>21</sup> The UN Committee on Economic, Social and Cultural Rights has stressed that sanctions “always have a dramatic impact on the economic, social and cultural rights... For example, they often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water.... It is thus clear... that insufficient attention is being paid to the impact of sanctions on vulnerable groups...”, in E/C.12/1997/8, CESCR, *The relationship between economic sanctions and respect for economic, social and cultural rights*, General comment 8, 12 december 1997, para 3 and 6.

concern in the field of human rights in Europe nowadays is the treatment given to asylum-seekers and migrants. They report violations of basic human rights in aspects such as torture and ill-treatment; expulsions in some European countries with no respect to the basic guarantees granted by international standards; social exclusion; violation of ILO standards at work...

The problem when dealing with asylum and migration issues is that the prevailing approach in most of the European countries is presided by concerns in terms of security, especially the events of September 11<sup>th</sup> in the United States, rather than in a policy of full respect to fundamental human rights. In this sense, it is very illustrative that no country from the EU has ratified yet the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>24</sup>, the most progressive international legal instrument for the protection of their basic labour rights<sup>25</sup>.

## **5. The role of Transnational Corporations**

Finally, the fifth challenge in the field of human rights is the role played by Europe-based Transnational Corporations (TNCs) and the response of the EU to this situation.

In recent years, a growing concern has emerged about the activities carried out by TNCs and its impact in the enjoyment of human rights in Africa<sup>26</sup>. According to the views expressed by Mary Robinson, former United Nations High Commissioner for Human Rights, in a report on *Business and Human Rights*,

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<sup>22</sup> RUIZ LOPEZ, B. and RUIZ VIEYTEZ, E.J.: "Las políticas de inmigración: la legitimación de la exclusión", *Cuadernos Deusto de Derechos Humanos*, nº 13, 2001.

<sup>23</sup> AMNISTIA INTERNACIONAL: *Informe 2003. El pasado dice cosas que interesan al futuro*, EDAI, Madrid, 2003.

<sup>24</sup> It has entered into force very recently, in July 2003.

<sup>25</sup> NAFZIGER, J.A.R. and BARTEL, B.C.: "The Migrant Workers Convention: its place in Human Rights Law", *International Migration Review*, Vol. 25, nº 4, 1991; BONET PEREZ, J.: "La Convención Internacional sobre la Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familiares", in GOMEZ ISA, F. (Director) and PUREZA, J.M.: *La protección...*, *op. cit.*, pp. 309-349.

<sup>26</sup> A general analysis of this issue can be found in EIDE, A.; OLE BERGESEN, H. and GOYER, P. (Eds.): *Human Rights and the Oil Industry*, Intersentia, Antwerp, 2000.

“Corporations should support and respect the protection of internationally proclaimed human rights within their sphere of influence and make sure they are not complicit in human rights abuses”<sup>27</sup>.

Some NGOs have reported abuses by TNCs of basic labour rights, exploitation of child labour, interference in the internal affairs of certain States, serious environmental consequences related to their production activities, gross human rights violations in countries like Nigeria<sup>28</sup>, Sudan or the Democratic Republic of Congo... To cite just one example, Amnesty International denounced in 2000 several TNCs from the oil sector for involvement in serious human rights violations occurring in Sudan; furthermore, in some cases these corporations benefit from those same human rights violations, given that they pave the way for the exploitation of oil<sup>29</sup>.

Since the 1970s there have been several initiatives by United Nations, the EU, the ILO, the OECD... attempting to establish certain standards and principles to be respected by TNCs. United Nations has been trying to adopt a Code of Conduct in which the activities of such corporations are obliged to follow certain principles. One of the latest versions of this draft of the Code of Conduct (1990), which unfortunately has not yet been approved due to the opposition on the industrialized nations where the majority of TNCs have their headquarters, states in article 14 that “transnational corporations should respect human rights and basic freedoms in the countries where they carry out their activities...”. Likewise, the UN Sub-Commission of Human Rights has recently decided to form a Working Group in charge of looking into the business practices of TNCs to see what impact they have on the enjoyment

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<sup>27</sup> *Business and Human Rights: A Progress Report*, OHCHR; Geneva, January 2000, p. 2.

<sup>28</sup> In Nigeria, a massacre of eighty people took place at Umuechem in november 1990 after Shell had called in the Mobile Police Force, a paramilitary group, for the protection of its installations and its personnel, in AMNESTY INTERNATIONAL: *Nigeria: Time to End Contempt for Human Rights*, AFR 44/14/96, november 1996.

<sup>29</sup> AMNESTY INTERNATIONAL: *Sudan: The Human Price of Oil*, AFR 54/04/00, 3 may 2000.

of human rights<sup>30</sup>. The Working Group held its first session in august 1999, confirming the serious hazards that certain work methods and activities of some TNCs present for human rights as a whole<sup>31</sup>. In subsequent reports, this Working Group has clearly established the risks some TNCs pose for an adequate protection of both civil and political rights and economic, social and cultural rights<sup>32</sup>.

The EU should take a leading role in all these initiatives and try to develop its own standards to oblige EU-based companies operating in third world countries to observe basic human rights. So far, the role played by the EU has been very limited and clearly insufficient<sup>33</sup>.

As we can easily see after having analysed the main challenges Euro-Africa relations face in the field of human rights, we have a long way to go and all efforts to overcome all these difficulties are more than wellcomed. This Conference should be viewed as a milestone in this demanding but, on the other hand, exciting process.

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<sup>30</sup> *Relación entre el disfrute de los derechos económicos, sociales y culturales y el derecho al desarrollo, y los métodos de trabajo y las actividades de las empresas transnacionales*, Resolución 1998/8, 20 de agosto de 1998.

<sup>31</sup> *Informe del Grupo de Trabajo del período de sesiones encargado de examinar los métodos de trabajo y las actividades de las empresas transnacionales sobre su primer período de sesiones*, Presidente-Relator: Sr. El-Hadji GUISSSE, E/CN.4/Sub.2/1999/9, 12 de agosto de 1999, p. 5.

<sup>32</sup> See the reports on the second, third, fourth and fifth periods of sessions, in E/CN.4/Sub.2/2000/12, 28 august 2000; E/CN.4/Sub.2/2001/9, 14 august 2001, E/CN.4/Sub.2/2002/13, 15 august 2002 and E/CN.4/Sub.2/2003/13, 6 august 2003.

<sup>33</sup> KAMMINGA, M.T.: "Holding Multinational Corporations Accountable for Human Rights Abuses: A Challenge for the EC", in ALSTON, P. (Ed.): *The EU...*, *op. cit.*, pp. 553-569.